















State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 05/02/2008 (Per: CMT)

Compile Draft – Appendix F Part 03 of 03

- | | |
|---|---|
| A  The <u>2007</u> drafting file for
LRB-4188 | G  The <u>2007</u> drafting file for
LRB-4321 |
| B  The <u>2007</u> drafting file for
LRB-4247 | H  The <u>2007</u> drafting file for
LRB-4322 |
| C  The <u>2007</u> drafting file for
LRB-4260 | I  The <u>2007</u> drafting file for
LRB-4323 |
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LRB-4293 | J  The <u>2007</u> drafting file for
LRB-4332 |
| E  The <u>2007</u> drafting file for
LRB-4309 | K  The <u>2007</u> drafting file for
LRB-4337 |
| F  The <u>2007</u> drafting file for
LRB-4315 | L  The <u>2007</u> drafting file for
LRB-4338 |

2007 LRB-4315 has been copied/added to the drafting file for

2007 LRBs0378

(Mr8 CSA1-AB1)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-4315/4

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stats

RMWTR

2007 BILL

in 4-18-08

change on
p. 17

Regen

1 AN ACT *to renumber* 71.34 (1) and 71.42 (1); *to renumber and amend* 71.26
2 (2) (a); *to amend* 71.05 (6) (a) 15., 71.30 (2), 71.45 (2) (a) 10. and 71.80 (1) (b);
3 and *to create* 71.01 (1am), 71.01 (1t), 71.01 (5s), 71.01 (9ad), 71.01 (9am), 71.01
4 (9an), 71.05 (6) (a) 24., 71.05 (6) (b) 45., 71.05 (6) (b) 46., 71.22 (1b), 71.22 (1tm),
5 71.22 (3m), 71.22 (9ad), 71.22 (9am), 71.22 (9an), 71.26 (2) (a) 7., 71.26 (2) (a)
6 8., 71.26 (2) (a) 9., 71.34 (1am), 71.34 (1b), 71.34 (1e), 71.34 (1k) (j), 71.34 (1k)
7 (k), 71.34 (1k) (L), 71.34 (1L), 71.34 (1p), 71.34 (1r), 71.42 (1b), 71.42 (1s), 71.42
8 (1t), 71.42 (4d), 71.42 (4m), 71.42 (4n), 71.45 (2) (a) 16., 71.45 (2) (a) 17., 71.45
9 (2) (a) 18. and 71.80 (23) of the statutes; **relating to:** related entity addback for
10 income and franchise tax purposes.

Analysis by the Legislative Reference Bureau

This bill requires related entities to add back certain amounts to federal gross income for state income and franchise tax purposes.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.01 (1am) of the statutes is created to read:

2 71.01 (1am) "Aggregate effective tax rate" means the sum of the effective tax
3 rates imposed by a state, U.S. possession, foreign country, or any combination
4 thereof, on the person or entity.

5 **SECTION 2.** 71.01 (1t) of the statutes is created to read:

6 71.01 (1t) "Effective tax rate" means the maximum tax rate imposed by the
7 state, U.S. possession, or foreign country, multiplied by the apportionment
8 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
9 possession, or foreign country.

10 **SECTION 3.** 71.01 (5s) of the statutes is created to read:

11 71.01 (5s) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "interest expenses"
12 means interest that would otherwise be deductible under section 163 of the Internal
13 Revenue Code and deductible in the computation of Wisconsin adjusted gross
14 income.

15 **SECTION 4.** 71.01 (9ad) of the statutes is created to read:

16 71.01 (9ad) "Qualified real estate investment trust" has the meaning given in
17 s. 71.22 (9ad).

18 **SECTION 5.** 71.01 (9am) of the statutes is created to read:

19 71.01 (9am) "Related entity" means any person related to a taxpayer as
20 provided under section 267 or 1563 of the Internal Revenue Code during all or a
21 portion of the taxpayer's taxable year and any real estate investment trust under

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1 section 856 of the Internal Revenue Code, except a qualified real estate investment
2 trust, if more than 50 percent of any class of the beneficial interests or shares of the
3 real estate investment trust are owned directly, indirectly, or constructively by the
4 taxpayer, or any person related to the taxpayer, during all or a portion of the
5 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
6 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
7 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
8 assets, or net profits of any person.

9 **SECTION 6.** 71.01 (9an) of the statutes is created to read:

10 71.01 (9an) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "rental expenses"
11 means the gross amounts that would otherwise be deductible in the computation of
12 Wisconsin adjusted gross income for the use of, or the right to use, real property and
13 tangible personal property in connection with real property, including services
14 furnished or rendered in connection with such property, regardless of how reported
15 for financial accounting purposes and regardless of how computed.

16 **SECTION 7.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Acts
17 20 and 96, is amended to read:

18 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
19 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e),
20 (5f), (5h), (5i), (5j), and (5k) and not passed through by a partnership, limited liability
21 company, or tax-option corporation that has added that amount to the partnership's,
22 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 ~~(4)~~ (1k) (g).

23 **SECTION 8.** 71.05 (6) (a) 24. of the statutes is created to read:

24 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue
25 Code for interest expenses and rental expenses that are directly or indirectly paid,

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1 accrued, or incurred to, or in connection directly or indirectly with one or more direct
2 or indirect transactions with, one or more related entities.

3 **SECTION 9.** 71.05 (6) (b) 45. of the statutes is created to read:

4 71.05 (6) (b) 45. An amount added to federal adjusted gross income under par.
5 (a) 24., to the extent that the conditions under s. 71.80 (23) are satisfied.

6 **SECTION 10.** 71.05 (6) (b) 46. of the statutes is created to read:

7 71.05 (6) (b) 46. An amount added, pursuant to par. (a) 24. or s. 71.26 (2) (a) 7.,
8 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that paid
9 interest expenses or rental expenses to the individual or fiduciary, to the extent that
10 the related entity could not offset such amount with the deduction allowable under
11 subd. 45. or s. 71.26 (2) (a) 8., 71.34 (1k) (k), or 71.45 (2) (a) 17.

12 **SECTION 11.** 71.22 (1b) of the statutes is created to read:

13 71.22 (1b) "Aggregate effective tax rate" means the sum of the effective tax
14 rates imposed by a state, U.S. possession, foreign country, or any combination
15 thereof, on the person or entity.

16 **SECTION 12.** 71.22 (1tm) of the statutes is created to read:

17 71.22 (1tm) "Effective tax rate" means the maximum tax rate imposed by the
18 state, U.S. possession, or foreign country, multiplied by the apportionment
19 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
20 possession, or foreign country.

21 **SECTION 13.** 71.22 (3m) of the statutes is created to read:

22 71.22 (3m) For purposes of s. 71.26 (2) (a) 7. and 9., "interest expenses" means
23 interest that would otherwise be deductible under section 163 of the Internal
24 Revenue Code, as modified under s. 71.26 (3).

25 **SECTION 14.** 71.22 (9ad) of the statutes is created to read:

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1 71.22 (9ad) (a) "Qualified real estate investment trust" means a real estate
2 investment trust, except a real estate investment trust the shares or beneficial
3 interests of which are not regularly traded on an established securities market and
4 more than 50 percent of the voting power or value of any class of the beneficial
5 interests or shares of which are owned or controlled, directly, indirectly or
6 constructively, by a single entity that is treated as an association taxable as a
7 corporation under the Internal Revenue Code.

8 (b) For purposes of this subsection, the following entities are not considered an
9 association taxable as a corporation:

10 1. An entity that is exempt from taxation under s. 71.26 (1) and exempt from
11 federal income tax pursuant to the provisions of section 501 (a) of the Internal
12 Revenue Code.

13 2. A real estate investment trust that is a qualified real estate investment trust.

14 3. A qualified real estate investment trust subsidiary under section 856 (i) of
15 the Internal Revenue Code that is a subsidiary of a qualified real estate investment
16 trust.

17 4. An Australian unit trust under the Australian Corporations Act in which the
18 principal class of units is listed on a recognized stock exchange in Australia and is
19 regularly traded on an established securities market, or an entity organized as a
20 trust, if an Australian unit trust described in this subdivision owns or controls,
21 directly or indirectly, 75 percent or more of the voting power or value of the beneficial
22 interests or shares of such trust.

23 5. A corporation, trust, association, or partnership organized outside the laws
24 of the United States that satisfies all of the following:

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1 a. At least 75 percent of the entity's total asset value at the close of its taxable
2 year consists of real estate assets, as defined in section 856 (c) (5) (B) of the Internal
3 Revenue Code, cash and cash equivalents, and U.S. government securities.

4 b. The entity is not subject to tax on amounts distributed to its beneficial
5 owners or is exempt from entity-level taxation.

6 c. The entity distributes at least 85 percent of its taxable income, as computed
7 in the jurisdiction in which it is organized, to the holders of its shares or certificates
8 of beneficial interest on an annual basis.

9 d. Either no more than 10 percent of the voting power or value in the entity is
10 held directly, indirectly, or constructively by a single entity or individual or the
11 shares or beneficial interests of the entity are regularly traded on an established
12 securities market.

13 e. The entity is organized in a country that has a tax treaty with the United
14 States.

15 (c) For purposes of this subsection, the constructive ownership rules of section
16 318 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
17 Revenue Code, shall apply in determining the ownership of stock, assets, or net
18 profits of any person.

19 **SECTION 15.** 71.22 (9am) of the statutes is created to read:

20 71.22 (9am) "Related entity" means any person related to a taxpayer as
21 provided under section 267 or 1563 of the Internal Revenue Code during all or a
22 portion of the taxpayer's taxable year and any real estate investment trust under
23 section 856 of the Internal Revenue Code, except a qualified real estate investment
24 trust, if more than 50 percent of any class of the beneficial interests or shares of the
25 real estate investment trust are owned directly, indirectly, or constructively by the

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1 taxpayer, or any person related to the taxpayer, during all or a portion of the
2 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
3 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
4 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
5 assets, or net profits of any person.

6 **SECTION 16.** 71.22 (9an) of the statutes is created to read:

7 71.22 (9an) For purposes of s. 71.26 (2) (a) 7. and 9., "rental expenses" means
8 the gross amounts that would otherwise be deductible under the Internal Revenue
9 Code, as modified under s. 71.26 (3), for the use of, or the right to use, real property
10 and tangible personal property in connection with real property, including services
11 furnished or rendered in connection with such property, regardless of how reported
12 for financial accounting purposes and regardless of how computed.

13 **SECTION 17.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Acts 20
14 and 96, is renumbered 71.26 (2) (a) (intro.) and amended to read:

15 71.26 (2) (a) *Corporations in general.* (intro.) The "net income" of a corporation
16 means the gross income as computed under the Internal Revenue Code as modified
17 under sub. (3) minus and modified as follows:

18 1. Minus the amount of recapture under s. 71.28 (1di) plus,

19 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) minus,

20 3. Minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under
21 s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that
22 the taxpayer first claimed the credit plus,

23 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),
24 (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i),
25 (5j), and (5k) and not passed through by a partnership, limited liability company, or

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1 tax-option corporation that has added that amount to the partnership's, limited
2 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
3 (1k) (g) plus.

4 5. Plus the amount of losses from the sale or other disposition of assets the gain
5 from which would be wholly exempt income, as defined in sub. (3) (L), if the assets
6 were sold or otherwise disposed of at a gain and minus deductions, as computed
7 under the Internal Revenue Code as modified under sub. (3), plus.

8 6. Plus or minus, as appropriate, an amount equal to the difference between
9 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
10 otherwise disposed of in a taxable transaction during the taxable year, except as
11 provided in par. (b) and s. 71.45 (2) and (5).

12 **SECTION 18.** 71.26 (2) (a) 7. of the statutes is created to read:

13 71.26 (2) (a) 7. Plus the amount deducted or excluded under the Internal
14 Revenue Code for interest expenses and rental expenses that are directly or
15 indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
16 one or more direct or indirect transactions with, one or more related entities.

17 **SECTION 19.** 71.26 (2) (a) 8. of the statutes is created to read:

18 71.26 (2) (a) 8. Minus the amount added to gross income under subd. 7., to the
19 extent that the conditions under s. 71.80 (23) are satisfied.

20 **SECTION 20.** 71.26 (2) (a) 9. of the statutes is created to read:

21 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)
22 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that
23 paid interest expenses or rental expenses to the corporation, to the extent that the
24 related entity could not offset such amount with the deduction allowable under subd.
25 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or 71.45 (2) (a) 17.

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1 **SECTION 21.** 71.30 (2) of the statutes is amended to read:

2 **71.30 (2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**
3 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or
4 not incorporated, whether or not organized in the United States and whether or not
5 affiliated) owned or controlled directly or indirectly by the same interests, the
6 secretary or his or her delegate may distribute, apportion or allocate gross income,
7 deductions, credits or allowances between or among such organizations, trades or
8 businesses, if he or she determines that such distribution, apportionment or
9 allocation is necessary in order to prevent evasion of taxes or clearly to reflect the
10 income of any of such organizations, trades or businesses. The authority granted
11 under this subsection is in addition to, and not a limitation of or dependent on, the
12 provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and
13 (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

14 **SECTION 22.** 71.34 (1) of the statutes is renumbered 71.34 (1k).

15 **SECTION 23.** 71.34 (1am) of the statutes is created to read:

16 **71.34 (1am)** "Aggregate effective tax rate" means the sum of the effective tax
17 rates imposed by a state, U.S. possession, foreign country, or any combination
18 thereof, on the person or entity.

19 **SECTION 24.** 71.34 (1b) of the statutes is created to read:

20 **71.34 (1b)** "Effective tax rate" means the maximum tax rate imposed by the
21 state, U.S. possession, or foreign country, multiplied by the apportionment
22 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
23 possession, or foreign country.

24 **SECTION 25.** 71.34 (1e) of the statutes is created to read:

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1 71.34 (1e) For purposes of sub. (1k) (j) and (L), "interest expenses" means
2 interest that would otherwise be deductible under section 163 of the Internal
3 Revenue Code and deductible in the computation of Wisconsin adjusted gross
4 income.

5 **SECTION 26.** 71.34 (1k) (j) of the statutes is created to read:

6 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded
7 under the Internal Revenue Code for interest expenses and rental expenses that are
8 directly or indirectly paid, accrued, or incurred to, or in connection directly or
9 indirectly with one or more direct or indirect transactions with, one or more related
10 entities.

11 **SECTION 27.** 71.34 (1k) (k) of the statutes is created to read:

12 71.34 (1k) (k) A deduction shall be allowed for the amount added to gross
13 income under par. (j), to the extent that the conditions under s. 71.80 (23) are
14 satisfied.

15 **SECTION 28.** 71.34 (1k) (L) of the statutes is created to read:

16 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to
17 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income
18 of a related entity that paid interest expenses or rental expenses to the corporation,
19 to the extent that the related entity could not offset such amount with the deduction
20 allowable under par. (k) or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

21 **SECTION 29.** 71.34 (1L) of the statutes is created to read:

22 71.34 (1L) "Qualified real estate investment trust" has the meaning given in
23 s. 71.22 (9ad).

24 **SECTION 30.** 71.34 (1p) of the statutes is created to read:

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1 **71.34 (1p)** "Related entity" means any person related to a taxpayer as provided
2 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
3 taxpayer's taxable year and any real estate investment trust under section 856 of the
4 Internal Revenue Code, except a qualified real estate investment trust, if more than
5 50 percent of any class of the beneficial interests or shares of the real estate
6 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
7 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
8 year. For purposes of this subsection, the constructive ownership rules of section 318
9 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
10 Revenue Code, shall apply in determining the ownership of stock, assets, or net
11 profits of any person.

12 **SECTION 31.** 71.34 (1r) of the statutes is created to read:

13 **71.34 (1r)** For purposes of sub. (1k) (j) and (L), "rental expenses" means the
14 gross amounts that would otherwise be deductible in the computation of Wisconsin
15 adjusted gross income for the use of, or the right to use, real property and tangible
16 personal property in connection with real property, including services furnished or
17 rendered in connection with such property, regardless of how reported for financial
18 accounting purposes and regardless of how computed.

19 **SECTION 32.** 71.42 (1) of the statutes is renumbered 71.42 (1g).

20 **SECTION 33.** 71.42 (1b) of the statutes is created to read:

21 **71.42 (1b)** "Aggregate effective tax rate" means the sum of the effective tax
22 rates imposed by a state, U.S. possession, foreign country, or any combination
23 thereof, on the person or entity.

24 **SECTION 34.** 71.42 (1s) of the statutes is created to read:

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1 71.42 (1s) "Effective tax rate" means the maximum tax rate imposed by the
2 state, U.S. possession, or foreign country, multiplied by the apportionment
3 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
4 possession, or foreign country.

5 **SECTION 35.** 71.42 (1t) of the statutes is created to read:

6 71.42 (1t) For purposes of s. 71.45 (2) (a) 16. and 18., "interest expenses" means
7 interest that would otherwise be deductible under section 163 of the Internal
8 Revenue Code, as adjusted under s. 71.45 (2).

9 **SECTION 36.** 71.42 (4d) of the statutes is created to read:

10 71.42 (4d) "Qualified real estate investment trust" has the meaning given in
11 s. 71.22 (9ad).

12 **SECTION 37.** 71.42 (4m) of the statutes is created to read:

13 71.42 (4m) "Related entity" means any person related to a taxpayer as provided
14 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
15 taxpayer's taxable year and any real estate investment trust under section 856 of the
16 Internal Revenue Code, except a qualified real estate investment trust, if more than
17 50 percent of any class of the beneficial interests or shares of the real estate
18 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
19 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
20 year. For purposes of this subsection, the constructive ownership rules of section 318
21 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
22 Revenue Code, shall apply in determining the ownership of stock, assets, or net
23 profits of any person.

24 **SECTION 38.** 71.42 (4n) of the statutes is created to read:

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1 71.42 (4n) For purposes of s. 71.45 (2) (a) 16. and 18., "rental expenses" means
2 the gross amounts that would otherwise be deductible under the Internal Revenue
3 Code, as adjusted under s. 71.45 (2), for the use of, or the right to use, real property
4 and tangible personal property in connection with real property, including services
5 furnished or rendered in connection with such property, regardless of how reported
6 for financial accounting purposes and regardless of how computed.

7 **SECTION 39.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Acts
8 20 and 96, is amended to read:

9 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
10 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
11 (5j), and (5k) and not passed through by a partnership, limited liability company, or
12 tax-option corporation that has added that amount to the partnership's, limited
13 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
14 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

15 **SECTION 40.** 71.45 (2) (a) 16. of the statutes is created to read:

16 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
17 excluded under the Internal Revenue Code for interest expenses and rental expenses
18 that are directly or indirectly paid, accrued, or incurred to, or in connection directly
19 or indirectly with one or more direct or indirect transactions with, one or more
20 related entities.

21 **SECTION 41.** 71.45 (2) (a) 17. of the statutes is created to read:

22 71.45 (2) (a) 17. By subtracting from federal taxable income the amount added
23 to federal taxable income under subd. 16., to the extent that the conditions under s.
24 71.80 (23) are satisfied.

25 **SECTION 42.** 71.45 (2) (a) 18. of the statutes is created to read:

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1 71.45 (2) (a) 18. A deduction shall be allowed for the amount added, pursuant
2 to subd. 16. or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.34 (1k) (j), to the federal income
3 of a related entity that paid interest expenses or rental expenses to the insurer, to
4 the extent that the related entity could not offset such amount with the deduction
5 allowable under subd. 17. or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.34 (1k) (k).

6 **SECTION 43.** 71.80 (1) (b) of the statutes is amended to read:

7 71.80 (1) (b) In any case of 2 or more organizations, trades or businesses
8 (whether or not incorporated, whether or not organized in the United States and
9 whether or not affiliated) owned or controlled directly or indirectly by the same
10 interests, the secretary or the secretary's delegate may distribute, apportion or
11 allocate gross income, deductions, credits or allowances between or among such
12 organizations, trades or businesses, if the secretary determines that such
13 distribution, apportionment or allocation is necessary in order to prevent evasion of
14 taxes or clearly to reflect the income of any of such organizations, trades or
15 businesses. The authority granted under this subsection is in addition to, and not
16 a limitation of or dependent on, the provisions of sub. (23) and ss. 71.05 (6) (a) 24. and
17 (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and (k), and 71.45 (2) (a) 16. and 17.

18 **SECTION 44.** 71.80 (23) of the statutes is created to read:

19 71.80 (23) RELATED ENTITY ADDBACKS. (a) The deductions provided under ss.
20 71.05 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed
21 for any interest expenses or rental expenses described in ss. 71.05 (6) (a) 24., 71.26
22 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following applies to the interest
23 expenses or rental expenses:

24 1. The related entity to which the taxpayer paid, accrued, or incurred the
25 interest expenses or rental expenses during the taxable year directly or indirectly

BILL

1 paid, accrued, or incurred such amounts in the same taxable year to a person who
2 is not a related entity or the related entity to which the taxpayer paid, accrued, or
3 incurred such expenses is a holding company or a direct or indirect subsidiary of a
4 holding company, as defined in 12 USC 1841 (a) or (L) or 12 USC 1467a (a) (1) (D),
5 not including any entity that is organized under the laws of another jurisdiction and
6 that primarily holds and manages investments of a bank, subsidiary, or affiliate. For
7 purposes of this subdivision, "interest" does not include interest that is paid in
8 connection with any debt that is incurred to acquire the taxpayer's assets or stock
9 under section 368 of the Internal Revenue Code. If a portion of such an interest
10 expense or rental expense is paid, accrued, or incurred in the same taxable year to
11 a person who is not a related entity, that portion shall be allowed as a deduction to
12 the taxpayer.

13 2. The related entity was subject to tax on, or measured by, its net income or
14 receipts in this state or any state, U.S. possession, or foreign country; the related
15 entity's tax base in such state, U.S. possession, or foreign country included the
16 income received from the taxpayer for the interest expenses or rental expenses; the
17 related entity's aggregate effective tax rate applied to such income or receipts was
18 at least 80 percent of the taxpayer's aggregate effective tax rate; and the related
19 entity is not a real estate investment trust under section 856 of the Internal Revenue
20 Code, other than a qualified real estate investment trust. For purposes of this
21 subdivision, "any state, U.S. possession, or foreign country" does not include any
22 state, U.S. possession, or foreign country under the laws of which the taxpayer files
23 with the related entity, or the related entity files with another entity, a combined
24 income tax report or return, a consolidated income tax report or return, or any other
25 report or return that is due because of the imposition of a tax that is measured on or

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1 by income or receipts, if the report or return results in eliminating the tax effects of
2 transactions, directly or indirectly, between either the taxpayer and the related
3 entity or between the related entity and another entity.

4 3. The taxpayer establishes that the transaction satisfies any other conditions
5 that the department considers relevant, based on the facts and circumstances, to
6 determine that the primary motivation for the transaction was one or more business
7 purposes other than the avoidance or reduction of state income or franchise taxes;
8 that the transaction changed the economic position of the taxpayer in a meaningful
9 way apart from tax effects; and that the interest expenses or rental expenses were
10 paid, accrued, or incurred using terms that reflect an arm's-length relationship.

11 (b) Notwithstanding par. (a), the deductions provided under ss. 71.05 (6) (b) 45.,
12 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for any interest
13 expenses or rental expenses that are directly or indirectly paid, accrued, or incurred
14 to, or in connection directly or indirectly with one or more direct or indirect
15 transactions with, one or more related entities, if the aggregate amount paid,
16 accrued, or incurred for those related entity transactions is not disclosed on a
17 separate form prescribed by the department in the manner prescribed by the
18 department.

19 **SECTION 9141. Nonstatutory provisions; Revenue.**

20 (1) RELATED ENTITY ADDBACK. The department of revenue has entered into a
21 substantial number of settlement agreements with banks and other financial
22 institutions regarding their investment subsidiaries. The intent of the legislature
23 in enacting 2007 Wisconsin Act (this act) is to have no effect on those settlement
24 agreements.

25 **SECTION 9341. Initial applicability; Revenue.**

BILL

1 (1) RELATED ENTITY ADDBACK. The renumbering of sections 71.34 (1) and 71.42
2 (1) of the statutes, the renumbering and amendment of section 71.26 (2) (a) of the
3 statutes, the amendment of sections 71.05 (6) (a) 15., 71.30 (2), 71.45 (2) (a) 10., and
4 71.80 (1) (b) of the statutes, and the creation of sections 71.01 (1am), (1t), (5s), (9ad),
5 (9am), and (9an), 71.05 (6) (a) 24. and (b) 45. and 46., 71.22 (1b), (1tm), (3m), (9ad),
6 (9am), and (9an), 71.26 (2) (a) 7., 8., and 9., 71.34 (1am), (1b), (1e), (1k) (j), (k), and
7 (L), (1L), ~~and~~ (1p), 71.42 (1b), (1s), (1t), (4d), (4m), and (4n), 71.45 (2) (a) 16., 17., and
8 18., and 71.80 (23) of the statutes first apply to taxable years beginning on January
9 1, 2008.

(END)

and (1r),

Kreye, Joseph

From: Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]
Sent: Tuesday, April 22, 2008 10:43 AM
To: Kreye, Joseph; Shanovich, Ron
Cc: Miller, Wendy J - DOR
Subject: RE: bill draft 4315/5

Okay with me.

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Tuesday, April 22, 2008 9:37 AM
To: Hardt, Diane L - DOR; Shanovich, Ron - LEGIS
Cc: Miller, Wendy J - DOR
Subject: RE: bill draft 4315/5

Diane,

We don't have any problem using the lower case "l" with regard to references to federal law. Our convention about using the uppercase "L" only applies to state statutes. So if it's OK with everyone, I can make the change and you can let Barb know. Thanks for the feedback.

Joe

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

From: Hardt, Diane L - DOR [mailto:Diane.Hardt@revenue.wi.gov]
Sent: Tuesday, April 22, 2008 7:08 AM
To: Kreye, Joseph; Shanovich, Ron
Cc: Miller, Wendy J - DOR
Subject: bill draft 4315/5

Joe:

If you look down this string of emails, the WI Bankers Association is suggesting that a certain reference to federal law be changed from capital L to small l. DOR agrees but we think it is your convention to replace small l with capital L? Rob Reinhardt asked me to contact you because he was leaving for vacation. Let me know what you decide to do so I can let Barb Worcester know.

Diane Hardt
diane.hardt@revenue.wi.gov

04/22/2008

Re: bill draft

Page 2 of 3

From: Reinhardt, Rob [mailto:Rob.Reinhardt@legis.wisconsin.gov]
Sent: Monday, April 21, 2008 8:55 PM
To: Hardt, Diane L - DOR
Subject: RE: bill draft

Diane, I tried forwarding this to Joe from home, but it didn't go through. Can you contact him and work this out and have someone tell Eric, Barb and Ron what you decide? Thanks.

From: Hardt, Diane L - DOR [mailto:Diane.Hardt@revenue.wi.gov]
Sent: Mon 4/21/2008 8:02 PM
To: Reinhardt, Rob
Cc: Miller, Wendy J - DOR
Subject: Re: bill draft

We agree it is a small l in federal law but I think the drafters use a capital L in WI to distinguish from a 1 (one). You can check with the drafter.

----- Original Message -----

From: Reinhardt, Rob <Rob.Reinhardt@legis.wisconsin.gov>
To: Hardt, Diane L - DOR
Sent: Mon Apr 21 16:24:01 2008
Subject: FW: bill draft

Is this ok Diane?

From: Worcester, Barbara
Sent: Monday, April 21, 2008 4:23 PM
To: Schutt, Eric
Cc: Reinhardt, Rob
Subject: RE: bill draft

Eric,

Fine with me as long as LFB makes Diane Hardt aware of the change.

Barb

From: Schutt, Eric
Sent: Monday, April 21, 2008 4:20 PM
To: Worcester, Barbara
Subject: FW: bill draft
Importance: High

Barb,

04/22/2008

Re: bill draft

Page 3 of 3

Please see below comment. Are you ok with me sending this along to Rob to make sure to put into drafting on the add-back language. This does not change anything, it is simply changing a cap. L to a small l to make sure that the reference is correct.

Let me know and I will copy you on the e-mail to Rob R.

ES

Eric Schutt
Chief of Staff
State Representative Kitty Rhoades
P:(608) 266-1526
Room 309 East, State Capitol
P.O. Box 8953
Madison, WI 53708

From: Rose Oswald Poels [<mailto:ropoels@wisbank.com>]
Sent: Monday, April 21, 2008 12:35 PM
To: Schutt, Eric
Cc: Jeremey Shepherd; Mike Semmann
Subject: bill draft
Importance: High

Eric,

I noticed that the drafter for LRB 4315/5 carried the citations provided by DOR over as is into the draft; however, one of them needs to be changed. We used a capital L in 12 USC 1841 (L) (page 15, line 4) to get the point that it is meant to be an L in citing to the correct section; however, the correct citation should be a small "l". In a word document, it comes across looking like an "i" so we didn't use that. Please make sure the citation is 12 USC 1841(a) or (l) – small L.

Thanks, Rose

Rose Oswald Poels
Senior Vice President
Wisconsin Bankers Association
4721 South Biltmore Lane
P.O. Box 8880
Madison, WI 53708-8880
608/441-1200
<<<http://www.wisbank.com/>>>

04/22/2008



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-4315/5
JK:wlj/cs/kf:rs

PrintR

2007 BILL

in 4-22-08

p. 15

Repeal
Do Not
Gen

1 AN ACT ~~to renumber 71.34 (1) and 71.42 (1); to renumber and amend 71.26~~
2 ~~(2) (a); to amend 71.05 (6) (a) 15., 71.30 (2), 71.45 (2) (a) 10. and 71.80 (1) (b);~~
3 ~~and to create 71.01 (1am), 71.01 (1t), 71.01 (5s), 71.01 (9ad), 71.01 (9am), 71.01~~
4 ~~(9an), 71.05 (6) (a) 24., 71.05 (6) (b) 45., 71.05 (6) (b) 46., 71.22 (1b), 71.22 (1tm),~~
5 ~~71.22 (3m), 71.22 (9ad), 71.22 (9am), 71.22 (9an), 71.26 (2) (a) 7., 71.26 (2) (a)~~
6 ~~8., 71.26 (2) (a) 9., 71.34 (1am), 71.34 (1b), 71.34 (1e), 71.34 (1k) (j), 71.34 (1k)~~
7 ~~(k), 71.34 (1k) (L), 71.34 (1L), 71.34 (1p), 71.34 (1r), 71.42 (1b), 71.42 (1s), 71.42~~
8 ~~(1t), 71.42 (4d), 71.42 (4m), 71.42 (4n), 71.45 (2) (a) 16., 71.45 (2) (a) 17., 71.45~~
9 ~~(2) (a) 18. and 71.80 (23) of the statutes; relating to: related entity addback for~~
10 income and franchise tax purposes.

Analysis by the Legislative Reference Bureau

This bill requires related entities to add back certain amounts to federal gross income for state income and franchise tax purposes.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.01 (1am) of the statutes is created to read:

2 71.01 (1am) "Aggregate effective tax rate" means the sum of the effective tax
3 rates imposed by a state, U.S. possession, foreign country, or any combination
4 thereof, on the person or entity.

5 **SECTION 2.** 71.01 (1t) of the statutes is created to read:

6 71.01 (1t) "Effective tax rate" means the maximum tax rate imposed by the
7 state, U.S. possession, or foreign country, multiplied by the apportionment
8 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
9 possession, or foreign country.

10 **SECTION 3.** 71.01 (5s) of the statutes is created to read:

11 71.01 (5s) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "interest expenses"
12 means interest that would otherwise be deductible under section 163 of the Internal
13 Revenue Code and deductible in the computation of Wisconsin adjusted gross
14 income.

15 **SECTION 4.** 71.01 (9ad) of the statutes is created to read:

16 71.01 (9ad) "Qualified real estate investment trust" has the meaning given in
17 s. 71.22 (9ad).

18 **SECTION 5.** 71.01 (9am) of the statutes is created to read:

19 71.01 (9am) "Related entity" means any person related to a taxpayer as
20 provided under section 267 or 1563 of the Internal Revenue Code during all or a
21 portion of the taxpayer's taxable year and any real estate investment trust under

BILL

1 section 856 of the Internal Revenue Code, except a qualified real estate investment
2 trust, if more than 50 percent of any class of the beneficial interests or shares of the
3 real estate investment trust are owned directly, indirectly, or constructively by the
4 taxpayer, or any person related to the taxpayer, during all or a portion of the
5 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
6 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
7 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
8 assets, or net profits of any person.

9 **SECTION 6.** 71.01 (9an) of the statutes is created to read:

10 71.01 (9an) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "rental expenses"
11 means the gross amounts that would otherwise be deductible in the computation of
12 Wisconsin adjusted gross income for the use of, or the right to use, real property and
13 tangible personal property in connection with real property, including services
14 furnished or rendered in connection with such property, regardless of how reported
15 for financial accounting purposes and regardless of how computed.

16 **SECTION 7.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Acts
17 20 and 96, is amended to read:

18 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
19 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e),
20 (5f), (5h), (5i), (5j), and (5k) and not passed through by a partnership, limited liability
21 company, or tax-option corporation that has added that amount to the partnership's,
22 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 ~~(1)~~ (1k) (g).

23 **SECTION 8.** 71.05 (6) (a) 24. of the statutes is created to read:

24 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue
25 Code for interest expenses and rental expenses that are directly or indirectly paid,

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1 accrued, or incurred to, or in connection directly or indirectly with one or more direct
2 or indirect transactions with, one or more related entities.

3 **SECTION 9.** 71.05 (6) (b) 45. of the statutes is created to read:

4 71.05 (6) (b) 45. An amount added to federal adjusted gross income under par.
5 (a) 24., to the extent that the conditions under s. 71.80 (23) are satisfied.

6 **SECTION 10.** 71.05 (6) (b) 46. of the statutes is created to read:

7 71.05 (6) (b) 46. An amount added, pursuant to par. (a) 24. or s. 71.26 (2) (a) 7.,
8 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that paid
9 interest expenses or rental expenses to the individual or fiduciary, to the extent that
10 the related entity could not offset such amount with the deduction allowable under
11 subd. 45. or s. 71.26 (2) (a) 8., 71.34 (1k) (k), or 71.45 (2) (a) 17.

12 **SECTION 11.** 71.22 (1b) of the statutes is created to read:

13 71.22 (1b) "Aggregate effective tax rate" means the sum of the effective tax
14 rates imposed by a state, U.S. possession, foreign country, or any combination
15 thereof, on the person or entity.

16 **SECTION 12.** 71.22 (1tm) of the statutes is created to read:

17 71.22 (1tm) "Effective tax rate" means the maximum tax rate imposed by the
18 state, U.S. possession, or foreign country, multiplied by the apportionment
19 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
20 possession, or foreign country.

21 **SECTION 13.** 71.22 (3m) of the statutes is created to read:

22 71.22 (3m) For purposes of s. 71.26 (2) (a) 7. and 9., "interest expenses" means
23 interest that would otherwise be deductible under section 163 of the Internal
24 Revenue Code, as modified under s. 71.26 (3).

25 **SECTION 14.** 71.22 (9ad) of the statutes is created to read:

BILL

1 71.22 (9ad) (a) "Qualified real estate investment trust" means a real estate
2 investment trust, except a real estate investment trust the shares or beneficial
3 interests of which are not regularly traded on an established securities market and
4 more than 50 percent of the voting power or value of any class of the beneficial
5 interests or shares of which are owned or controlled, directly, indirectly or
6 constructively, by a single entity that is treated as an association taxable as a
7 corporation under the Internal Revenue Code.

8 (b) For purposes of this subsection, the following entities are not considered an
9 association taxable as a corporation:

10 1. An entity that is exempt from taxation under s. 71.26 (1) and exempt from
11 federal income tax pursuant to the provisions of section 501 (a) of the Internal
12 Revenue Code.

13 2. A real estate investment trust that is a qualified real estate investment trust.

14 3. A qualified real estate investment trust subsidiary under section 856 (i) of
15 the Internal Revenue Code that is a subsidiary of a qualified real estate investment
16 trust.

17 4. An Australian unit trust under the Australian Corporations Act in which the
18 principal class of units is listed on a recognized stock exchange in Australia and is
19 regularly traded on an established securities market, or an entity organized as a
20 trust, if an Australian unit trust described in this subdivision owns or controls,
21 directly or indirectly, 75 percent or more of the voting power or value of the beneficial
22 interests or shares of such trust.

23 5. A corporation, trust, association, or partnership organized outside the laws
24 of the United States that satisfies all of the following:

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1 a. At least 75 percent of the entity's total asset value at the close of its taxable
2 year consists of real estate assets, as defined in section 856 (c) (5) (B) of the Internal
3 Revenue Code, cash and cash equivalents, and U.S. government securities.

4 b. The entity is not subject to tax on amounts distributed to its beneficial
5 owners or is exempt from entity-level taxation.

6 c. The entity distributes at least 85 percent of its taxable income, as computed
7 in the jurisdiction in which it is organized, to the holders of its shares or certificates
8 of beneficial interest on an annual basis.

9 d. Either no more than 10 percent of the voting power or value in the entity is
10 held directly, indirectly, or constructively by a single entity or individual or the
11 shares or beneficial interests of the entity are regularly traded on an established
12 securities market.

13 e. The entity is organized in a country that has a tax treaty with the United
14 States.

15 (c) For purposes of this subsection, the constructive ownership rules of section
16 318 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
17 Revenue Code, shall apply in determining the ownership of stock, assets, or net
18 profits of any person.

19 **SECTION 15.** 71.22 (9am) of the statutes is created to read:

20 71.22 (9am) "Related entity" means any person related to a taxpayer as
21 provided under section 267 or 1563 of the Internal Revenue Code during all or a
22 portion of the taxpayer's taxable year and any real estate investment trust under
23 section 856 of the Internal Revenue Code, except a qualified real estate investment
24 trust, if more than 50 percent of any class of the beneficial interests or shares of the
25 real estate investment trust are owned directly, indirectly, or constructively by the

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1 taxpayer, or any person related to the taxpayer, during all or a portion of the
2 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
3 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
4 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
5 assets, or net profits of any person.

6 **SECTION 16.** 71.22 (9an) of the statutes is created to read:

7 71.22 (9an) For purposes of s. 71.26 (2) (a) 7. and 9., "rental expenses" means
8 the gross amounts that would otherwise be deductible under the Internal Revenue
9 Code, as modified under s. 71.26 (3), for the use of, or the right to use, real property
10 and tangible personal property in connection with real property, including services
11 furnished or rendered in connection with such property, regardless of how reported
12 for financial accounting purposes and regardless of how computed.

13 **SECTION 17.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Acts 20
14 and 96, is renumbered 71.26 (2) (a) (intro.) and amended to read:

15 71.26 (2) (a) *Corporations in general.* (intro.) The "net income" of a corporation
16 means the gross income as computed under the Internal Revenue Code as modified
17 under sub. (3) minus and modified as follows:

18 1. Minus the amount of recapture under s. 71.28 (1di) plus.

19 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) minus,

20 3. Minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under
21 s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that
22 the taxpayer first claimed the credit plus.

23 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),
24 (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i),
25 (5j), and (5k) and not passed through by a partnership, limited liability company, or

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1 tax-option corporation that has added that amount to the partnership's, limited
2 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
3 (1k) (g) plus.

4 5. Plus the amount of losses from the sale or other disposition of assets the gain
5 from which would be wholly exempt income, as defined in sub. (3) (L), if the assets
6 were sold or otherwise disposed of at a gain and minus deductions, as computed
7 under the Internal Revenue Code as modified under sub. (3), plus.

8 6. Plus or minus, as appropriate, an amount equal to the difference between
9 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
10 otherwise disposed of in a taxable transaction during the taxable year, except as
11 provided in par. (b) and s. 71.45 (2) and (5).

12 **SECTION 18.** 71.26 (2) (a) 7. of the statutes is created to read:

13 71.26 (2) (a) 7. Plus the amount deducted or excluded under the Internal
14 Revenue Code for interest expenses and rental expenses that are directly or
15 indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
16 one or more direct or indirect transactions with, one or more related entities.

17 **SECTION 19.** 71.26 (2) (a) 8. of the statutes is created to read:

18 71.26 (2) (a) 8. Minus the amount added to gross income under subd. 7., to the
19 extent that the conditions under s. 71.80 (23) are satisfied.

20 **SECTION 20.** 71.26 (2) (a) 9. of the statutes is created to read:

21 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)
22 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that
23 paid interest expenses or rental expenses to the corporation, to the extent that the
24 related entity could not offset such amount with the deduction allowable under subd.
25 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or 71.45 (2) (a) 17.

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1 **SECTION 21.** 71.30 (2) of the statutes is amended to read:

2 71.30 (2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE
3 BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or
4 not incorporated, whether or not organized in the United States and whether or not
5 affiliated) owned or controlled directly or indirectly by the same interests, the
6 secretary or his or her delegate may distribute, apportion or allocate gross income,
7 deductions, credits or allowances between or among such organizations, trades or
8 businesses, if he or she determines that such distribution, apportionment or
9 allocation is necessary in order to prevent evasion of taxes or clearly to reflect the
10 income of any of such organizations, trades or businesses. The authority granted
11 under this subsection is in addition to, and not a limitation of or dependent on, the
12 provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and
13 (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

14 **SECTION 22.** 71.34 (1) of the statutes is renumbered 71.34 (1k).

15 **SECTION 23.** 71.34 (1am) of the statutes is created to read:

16 71.34 (1am) "Aggregate effective tax rate" means the sum of the effective tax
17 rates imposed by a state, U.S. possession, foreign country, or any combination
18 thereof, on the person or entity.

19 **SECTION 24.** 71.34 (1b) of the statutes is created to read:

20 71.34 (1b) "Effective tax rate" means the maximum tax rate imposed by the
21 state, U.S. possession, or foreign country, multiplied by the apportionment
22 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
23 possession, or foreign country.

24 **SECTION 25.** 71.34 (1e) of the statutes is created to read:

BILL

1 71.34 (1e) For purposes of sub. (1k) (j) and (L), "interest expenses" means
2 interest that would otherwise be deductible under section 163 of the Internal
3 Revenue Code and deductible in the computation of Wisconsin adjusted gross
4 income.

5 **SECTION 26.** 71.34 (1k) (j) of the statutes is created to read:

6 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded
7 under the Internal Revenue Code for interest expenses and rental expenses that are
8 directly or indirectly paid, accrued, or incurred to, or in connection directly or
9 indirectly with one or more direct or indirect transactions with, one or more related
10 entities.

11 **SECTION 27.** 71.34 (1k) (k) of the statutes is created to read:

12 71.34 (1k) (k) A deduction shall be allowed for the amount added to gross
13 income under par. (j), to the extent that the conditions under s. 71.80 (23) are
14 satisfied.

15 **SECTION 28.** 71.34 (1k) (L) of the statutes is created to read:

16 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to
17 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income
18 of a related entity that paid interest expenses or rental expenses to the corporation,
19 to the extent that the related entity could not offset such amount with the deduction
20 allowable under par. (k) or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

21 **SECTION 29.** 71.34 (1L) of the statutes is created to read:

22 71.34 (1L) "Qualified real estate investment trust" has the meaning given in
23 s. 71.22 (9ad).

24 **SECTION 30.** 71.34 (1p) of the statutes is created to read:

BILL

1 71.34 (1p) "Related entity" means any person related to a taxpayer as provided
2 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
3 taxpayer's taxable year and any real estate investment trust under section 856 of the
4 Internal Revenue Code, except a qualified real estate investment trust, if more than
5 50 percent of any class of the beneficial interests or shares of the real estate
6 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
7 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
8 year. For purposes of this subsection, the constructive ownership rules of section 318
9 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
10 Revenue Code, shall apply in determining the ownership of stock, assets, or net
11 profits of any person.

12 **SECTION 31.** 71.34 (1r) of the statutes is created to read:

13 71.34 (1r) For purposes of sub. (1k) (j) and (L), "rental expenses" means the
14 gross amounts that would otherwise be deductible in the computation of Wisconsin
15 adjusted gross income for the use of, or the right to use, real property and tangible
16 personal property in connection with real property, including services furnished or
17 rendered in connection with such property, regardless of how reported for financial
18 accounting purposes and regardless of how computed.

19 **SECTION 32.** 71.42 (1) of the statutes is renumbered 71.42 (1g).

20 **SECTION 33.** 71.42 (1b) of the statutes is created to read:

21 71.42 (1b) "Aggregate effective tax rate" means the sum of the effective tax
22 rates imposed by a state, U.S. possession, foreign country, or any combination
23 thereof, on the person or entity.

24 **SECTION 34.** 71.42 (1s) of the statutes is created to read:

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1 71.42 (1s) "Effective tax rate" means the maximum tax rate imposed by the
2 state, U.S. possession, or foreign country, multiplied by the apportionment
3 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
4 possession, or foreign country.

5 **SECTION 35.** 71.42 (1t) of the statutes is created to read:

6 71.42 (1t) For purposes of s. 71.45 (2) (a) 16. and 18., "interest expenses" means
7 interest that would otherwise be deductible under section 163 of the Internal
8 Revenue Code, as adjusted under s. 71.45 (2).

9 **SECTION 36.** 71.42 (4d) of the statutes is created to read:

10 71.42 (4d) "Qualified real estate investment trust" has the meaning given in
11 s. 71.22 (9ad).

12 **SECTION 37.** 71.42 (4m) of the statutes is created to read:

13 71.42 (4m) "Related entity" means any person related to a taxpayer as provided
14 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
15 taxpayer's taxable year and any real estate investment trust under section 856 of the
16 Internal Revenue Code, except a qualified real estate investment trust, if more than
17 50 percent of any class of the beneficial interests or shares of the real estate
18 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
19 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
20 year. For purposes of this subsection, the constructive ownership rules of section 318
21 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
22 Revenue Code, shall apply in determining the ownership of stock, assets, or net
23 profits of any person.

24 **SECTION 38.** 71.42 (4n) of the statutes is created to read:

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1 71.42 (4n) For purposes of s. 71.45 (2) (a) 16. and 18., “rental expenses” means
2 the gross amounts that would otherwise be deductible under the Internal Revenue
3 Code, as adjusted under s. 71.45 (2), for the use of, or the right to use, real property
4 and tangible personal property in connection with real property, including services
5 furnished or rendered in connection with such property, regardless of how reported
6 for financial accounting purposes and regardless of how computed.

7 **SECTION 39.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Acts
8 20 and 96, is amended to read:

9 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
10 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
11 (5j), and (5k) and not passed through by a partnership, limited liability company, or
12 tax-option corporation that has added that amount to the partnership’s, limited
13 liability company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1)
14 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

15 **SECTION 40.** 71.45 (2) (a) 16. of the statutes is created to read:

16 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
17 excluded under the Internal Revenue Code for interest expenses and rental expenses
18 that are directly or indirectly paid, accrued, or incurred to, or in connection directly
19 or indirectly with one or more direct or indirect transactions with, one or more
20 related entities.

21 **SECTION 41.** 71.45 (2) (a) 17. of the statutes is created to read:

22 71.45 (2) (a) 17. By subtracting from federal taxable income the amount added
23 to federal taxable income under subd. 16., to the extent that the conditions under s.
24 71.80 (23) are satisfied.

25 **SECTION 42.** 71.45 (2) (a) 18. of the statutes is created to read:

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1 71.45 (2) (a) 18. A deduction shall be allowed for the amount added, pursuant
2 to subd. 16. or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.34 (1k) (j), to the federal income
3 of a related entity that paid interest expenses or rental expenses to the insurer, to
4 the extent that the related entity could not offset such amount with the deduction
5 allowable under subd. 17. or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.34 (1k) (k).

6 **SECTION 43.** 71.80 (1) (b) of the statutes is amended to read:

7 71.80 (1) (b) In any case of 2 or more organizations, trades or businesses
8 (whether or not incorporated, whether or not organized in the United States and
9 whether or not affiliated) owned or controlled directly or indirectly by the same
10 interests, the secretary or the secretary's delegate may distribute, apportion or
11 allocate gross income, deductions, credits or allowances between or among such
12 organizations, trades or businesses, if the secretary determines that such
13 distribution, apportionment or allocation is necessary in order to prevent evasion of
14 taxes or clearly to reflect the income of any of such organizations, trades or
15 businesses. The authority granted under this subsection is in addition to, and not
16 a limitation of or dependent on, the provisions of sub. (23) and ss. 71.05 (6) (a) 24. and
17 (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and (k), and 71.45 (2) (a) 16. and 17.

18 **SECTION 44.** 71.80 (23) of the statutes is created to read:

19 71.80 (23) RELATED ENTITY ADDBACKS. (a) The deductions provided under ss.
20 71.05 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed
21 for any interest expenses or rental expenses described in ss. 71.05 (6) (a) 24., 71.26
22 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following applies to the interest
23 expenses or rental expenses:

24 1. The related entity to which the taxpayer paid, accrued, or incurred the
25 interest expenses or rental expenses during the taxable year directly or indirectly

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1 paid, accrued, or incurred such amounts in the same taxable year to a person who
2 is not a related entity or the related entity to which the taxpayer paid, accrued, or
3 incurred such expenses is a holding company or a direct or indirect subsidiary of a
4 holding company, as defined in 12 USC 1841 (a) or ~~14~~ for 12 USC 1467a (a) (1) (D),
5 not including any entity that is organized under the laws of another jurisdiction and
6 that primarily holds and manages investments of a bank, subsidiary, or affiliate. For
7 purposes of this subdivision, "interest" does not include interest that is paid in
8 connection with any debt that is incurred to acquire the taxpayer's assets or stock
9 under section 368 of the Internal Revenue Code. If a portion of such an interest
10 expense or rental expense is paid, accrued, or incurred in the same taxable year to
11 a person who is not a related entity, that portion shall be allowed as a deduction to
12 the taxpayer.

13 2. The related entity was subject to tax on, or measured by, its net income or
14 receipts in this state or any state, U.S. possession, or foreign country; the related
15 entity's tax base in such state, U.S. possession, or foreign country included the
16 income received from the taxpayer for the interest expenses or rental expenses; the
17 related entity's aggregate effective tax rate applied to such income or receipts was
18 at least 80 percent of the taxpayer's aggregate effective tax rate; and the related
19 entity is not a real estate investment trust under section 856 of the Internal Revenue
20 Code, other than a qualified real estate investment trust. For purposes of this
21 subdivision, "any state, U.S. possession, or foreign country" does not include any
22 state, U.S. possession, or foreign country under the laws of which the taxpayer files
23 with the related entity, or the related entity files with another entity, a combined
24 income tax report or return, a consolidated income tax report or return, or any other
25 report or return that is due because of the imposition of a tax that is measured on or

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1 by income or receipts, if the report or return results in eliminating the tax effects of
2 transactions, directly or indirectly, between either the taxpayer and the related
3 entity or between the related entity and another entity.

4 3. The taxpayer establishes that the transaction satisfies any other conditions
5 that the department considers relevant, based on the facts and circumstances, to
6 determine that the primary motivation for the transaction was one or more business
7 purposes other than the avoidance or reduction of state income or franchise taxes;
8 that the transaction changed the economic position of the taxpayer in a meaningful
9 way apart from tax effects; and that the interest expenses or rental expenses were
10 paid, accrued, or incurred using terms that reflect an arm's-length relationship.

11 (b) Notwithstanding par. (a), the deductions provided under ss. 71.05 (6) (b) 45.,
12 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for any interest
13 expenses or rental expenses that are directly or indirectly paid, accrued, or incurred
14 to, or in connection directly or indirectly with one or more direct or indirect
15 transactions with, one or more related entities, if the aggregate amount paid,
16 accrued, or incurred for those related entity transactions is not disclosed on a
17 separate form prescribed by the department in the manner prescribed by the
18 department.

19 **SECTION 9141. Nonstatutory provisions; Revenue.**

20 (1) RELATED ENTITY ADDBACK. The department of revenue has entered into a
21 substantial number of settlement agreements with banks and other financial
22 institutions regarding their investment subsidiaries. The intent of the legislature
23 in enacting 2007 Wisconsin Act (this act) is to have no effect on those settlement
24 agreements.

25 **SECTION 9341. Initial applicability; Revenue.**

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1 (1) RELATED ENTITY ADDBACK. The renumbering of sections 71.34 (1) and 71.42
2 (1) of the statutes, the renumbering and amendment of section 71.26 (2) (a) of the
3 statutes, the amendment of sections 71.05 (6) (a) 15., 71.30 (2), 71.45 (2) (a) 10., and
4 71.80 (1) (b) of the statutes, and the creation of sections 71.01 (1am), (1t), (5s), (9ad),
5 (9am), and (9an), 71.05 (6) (a) 24. and (b) 45. and 46., 71.22 (1b), (1tm), (3m), (9ad),
6 (9am), and (9an), 71.26 (2) (a) 7., 8., and 9., 71.34 (1am), (1b), (1e), (1k) (j), (k), and
7 (L), (1L), (1p), and (1r), 71.42 (1b), (1s), (1t), (4d), (4m), and (4n), 71.45 (2) (a) 16., 17.,
8 and 18., and 71.80 (23) of the statutes first apply to taxable years beginning on
9 January 1, 2008.

10

(END)



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 03/02/2008 (Per: CMT)

☛ **Compile Draft – Appendix F**
Part 03 of 03

- | | |
|--|--|
| A ☛ The 2007 drafting file for
LRB-4188 | G ☛ The 2007 drafting file for
LRB-4321 |
| B ☛ The 2007 drafting file for
LRB-4247 | H ☛ The 2007 drafting file for
LRB-4322 |
| C ☛ The 2007 drafting file for
LRB-4260 | I ☛ The 2007 drafting file for
LRB-4323 |
| D ☛ The 2007 drafting file for
LRB-4293 | J ☛ The 2007 drafting file for
LRB-4332 |
| E ☛ The 2007 drafting file for
LRB-4309 | K ☛ The 2007 drafting file for
LRB-4337 |
| F ☛ The 2007 drafting file for
LRB-4315 | L ☛ The 2007 drafting file for
LRB-4338 |

2007 LRB-4315 has been copied/added to the drafting file for

2007 LRBs0378

(Mr8 CSA1-AB1)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-4315/6
JK:wlj/cs/kf:pg

2007 BILL

1 AN ACT ...; relating to: related entity addback for income and franchise tax
2 purposes.

Analysis by the Legislative Reference Bureau

This bill requires related entities to add back certain amounts to federal gross income for state income and franchise tax purposes.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 71.01 (1am) of the statutes is created to read:

4 71.01 (1am) "Aggregate effective tax rate" means the sum of the effective tax
5 rates imposed by a state, U.S. possession, foreign country, or any combination
6 thereof, on the person or entity.

7 SECTION 2. 71.01 (1t) of the statutes is created to read:

8 71.01 (1t) "Effective tax rate" means the maximum tax rate imposed by the
9 state, U.S. possession, or foreign country, multiplied by the apportionment

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1 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
2 possession, or foreign country.

3 **SECTION 3.** 71.01 (5s) of the statutes is created to read:

4 71.01 (5s) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "interest expenses"
5 means interest that would otherwise be deductible under section 163 of the Internal
6 Revenue Code and deductible in the computation of Wisconsin adjusted gross
7 income.

8 **SECTION 4.** 71.01 (9ad) of the statutes is created to read:

9 71.01 (9ad) "Qualified real estate investment trust" has the meaning given in
10 s. 71.22 (9ad).

11 **SECTION 5.** 71.01 (9am) of the statutes is created to read:

12 71.01 (9am) "Related entity" means any person related to a taxpayer as
13 provided under section 267 or 1563 of the Internal Revenue Code during all or a
14 portion of the taxpayer's taxable year and any real estate investment trust under
15 section 856 of the Internal Revenue Code, except a qualified real estate investment
16 trust, if more than 50 percent of any class of the beneficial interests or shares of the
17 real estate investment trust are owned directly, indirectly, or constructively by the
18 taxpayer, or any person related to the taxpayer, during all or a portion of the
19 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
20 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
21 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
22 assets, or net profits of any person.

23 **SECTION 6.** 71.01 (9an) of the statutes is created to read:

24 71.01 (9an) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "rental expenses"
25 means the gross amounts that would otherwise be deductible in the computation of

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1 Wisconsin adjusted gross income for the use of, or the right to use, real property and
2 tangible personal property in connection with real property, including services
3 furnished or rendered in connection with such property, regardless of how reported
4 for financial accounting purposes and regardless of how computed.

5 **SECTION 7.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Acts
6 20 and 96, is amended to read:

7 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
8 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e),
9 (5f), (5h), (5i), (5j), and (5k) and not passed through by a partnership, limited liability
10 company, or tax-option corporation that has added that amount to the partnership's,
11 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 ~~(1)~~ (1k) (g).

12 **SECTION 8.** 71.05 (6) (a) 24. of the statutes is created to read:

13 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue
14 Code for interest expenses and rental expenses that are directly or indirectly paid,
15 accrued, or incurred to, or in connection directly or indirectly with one or more direct
16 or indirect transactions with, one or more related entities.

17 **SECTION 9.** 71.05 (6) (b) 45. of the statutes is created to read:

18 71.05 (6) (b) 45. An amount added to federal adjusted gross income under par.
19 (a) 24., to the extent that the conditions under s. 71.80 (23) are satisfied.

20 **SECTION 10.** 71.05 (6) (b) 46. of the statutes is created to read:

21 71.05 (6) (b) 46. An amount added, pursuant to par. (a) 24. or s. 71.26 (2) (a) 7.,
22 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that paid
23 interest expenses or rental expenses to the individual or fiduciary, to the extent that
24 the related entity could not offset such amount with the deduction allowable under
25 subd. 45. or s. 71.26 (2) (a) 8., 71.34 (1k) (k), or 71.45 (2) (a) 17.

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1 **SECTION 11.** 71.22 (1b) of the statutes is created to read:

2 71.22 (1b) "Aggregate effective tax rate" means the sum of the effective tax
3 rates imposed by a state, U.S. possession, foreign country, or any combination
4 thereof, on the person or entity.

5 **SECTION 12.** 71.22 (1tm) of the statutes is created to read:

6 71.22 (1tm) "Effective tax rate" means the maximum tax rate imposed by the
7 state, U.S. possession, or foreign country, multiplied by the apportionment
8 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
9 possession, or foreign country.

10 **SECTION 13.** 71.22 (3m) of the statutes is created to read:

11 71.22 (3m) For purposes of s. 71.26 (2) (a) 7. and 9., "interest expenses" means
12 interest that would otherwise be deductible under section 163 of the Internal
13 Revenue Code, as modified under s. 71.26 (3).

14 **SECTION 14.** 71.22 (9ad) of the statutes is created to read:

15 71.22 (9ad) (a) "Qualified real estate investment trust" means a real estate
16 investment trust, except a real estate investment trust the shares or beneficial
17 interests of which are not regularly traded on an established securities market and
18 more than 50 percent of the voting power or value of any class of the beneficial
19 interests or shares of which are owned or controlled, directly, indirectly or
20 constructively, by a single entity that is treated as an association taxable as a
21 corporation under the Internal Revenue Code.

22 (b) For purposes of this subsection, the following entities are not considered an
23 association taxable as a corporation:

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1 1. An entity that is exempt from taxation under s. 71.26 (1) and exempt from
2 federal income tax pursuant to the provisions of section 501 (a) of the Internal
3 Revenue Code.

4 2. A real estate investment trust that is a qualified real estate investment trust.

5 3. A qualified real estate investment trust subsidiary under section 856 (i) of
6 the Internal Revenue Code that is a subsidiary of a qualified real estate investment
7 trust.

8 4. An Australian unit trust under the Australian Corporations Act in which the
9 principal class of units is listed on a recognized stock exchange in Australia and is
10 regularly traded on an established securities market, or an entity organized as a
11 trust, if an Australian unit trust described in this subdivision owns or controls,
12 directly or indirectly, 75 percent or more of the voting power or value of the beneficial
13 interests or shares of such trust.

14 5. A corporation, trust, association, or partnership organized outside the laws
15 of the United States that satisfies all of the following:

16 a. At least 75 percent of the entity's total asset value at the close of its taxable
17 year consists of real estate assets, as defined in section 856 (c) (5) (B) of the Internal
18 Revenue Code, cash and cash equivalents, and U.S. government securities.

19 b. The entity is not subject to tax on amounts distributed to its beneficial
20 owners or is exempt from entity-level taxation.

21 c. The entity distributes at least 85 percent of its taxable income, as computed
22 in the jurisdiction in which it is organized, to the holders of its shares or certificates
23 of beneficial interest on an annual basis.

24 d. Either no more than 10 percent of the voting power or value in the entity is
25 held directly, indirectly, or constructively by a single entity or individual or the

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1 shares or beneficial interests of the entity are regularly traded on an established
2 securities market.

3 e. The entity is organized in a country that has a tax treaty with the United
4 States.

5 (c) For purposes of this subsection, the constructive ownership rules of section
6 318 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
7 Revenue Code, shall apply in determining the ownership of stock, assets, or net
8 profits of any person.

9 **SECTION 15.** 71.22 (9am) of the statutes is created to read:

10 71.22 (9am) "Related entity" means any person related to a taxpayer as
11 provided under section 267 or 1563 of the Internal Revenue Code during all or a
12 portion of the taxpayer's taxable year and any real estate investment trust under
13 section 856 of the Internal Revenue Code, except a qualified real estate investment
14 trust, if more than 50 percent of any class of the beneficial interests or shares of the
15 real estate investment trust are owned directly, indirectly, or constructively by the
16 taxpayer, or any person related to the taxpayer, during all or a portion of the
17 taxpayer's taxable year. For purposes of this subsection, the constructive ownership
18 rules of section 318 (a) of the Internal Revenue Code, as modified by section 856 (d)
19 (5) of the Internal Revenue Code, shall apply in determining the ownership of stock,
20 assets, or net profits of any person.

21 **SECTION 16.** 71.22 (9an) of the statutes is created to read:

22 71.22 (9an) For purposes of s. 71.26 (2) (a) 7. and 9., "rental expenses" means
23 the gross amounts that would otherwise be deductible under the Internal Revenue
24 Code, as modified under s. 71.26 (3), for the use of, or the right to use, real property
25 and tangible personal property in connection with real property, including services

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1 furnished or rendered in connection with such property, regardless of how reported
2 for financial accounting purposes and regardless of how computed.

3 **SECTION 17.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Acts 20
4 and 96, is renumbered 71.26 (2) (a) (intro.) and amended to read:

5 71.26 (2) (a) *Corporations in general.* (intro.) The "net income" of a corporation
6 means the gross income as computed under the Internal Revenue Code as modified
7 under sub. (3) ~~minus~~ and modified as follows:

8 1. Minus the amount of recapture under s. 71.28 (1di) ~~plus~~.

9 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) ~~minus~~.

10 3. Minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under
11 s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that
12 the taxpayer first claimed the credit ~~plus~~.

13 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),
14 (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i),
15 (5j), and (5k) and not passed through by a partnership, limited liability company, or
16 tax-option corporation that has added that amount to the partnership's, limited
17 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (~~1~~)
18 (~~1k~~) (g) ~~plus~~.

19 5. Plus the amount of losses from the sale or other disposition of assets the gain
20 from which would be wholly exempt income, as defined in sub. (3) (L), if the assets
21 were sold or otherwise disposed of at a gain and minus deductions, as computed
22 under the Internal Revenue Code as modified under sub. (3), ~~plus~~.

23 6. Plus or minus, as appropriate, an amount equal to the difference between
24 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or

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1 otherwise disposed of in a taxable transaction during the taxable year, except as
2 provided in par. (b) and s. 71.45 (2) and (5).

3 **SECTION 18.** 71.26 (2) (a) 7. of the statutes is created to read:

4 71.26 (2) (a) 7. Plus the amount deducted or excluded under the Internal
5 Revenue Code for interest expenses and rental expenses that are directly or
6 indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
7 one or more direct or indirect transactions with, one or more related entities.

8 **SECTION 19.** 71.26 (2) (a) 8. of the statutes is created to read:

9 71.26 (2) (a) 8. Minus the amount added to gross income under subd. 7., to the
10 extent that the conditions under s. 71.80 (23) are satisfied.

11 **SECTION 20.** 71.26 (2) (a) 9. of the statutes is created to read:

12 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)
13 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that
14 paid interest expenses or rental expenses to the corporation, to the extent that the
15 related entity could not offset such amount with the deduction allowable under subd.
16 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or 71.45 (2) (a) 17.

17 **SECTION 21.** 71.30 (2) of the statutes is amended to read:

18 71.30 (2) **ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**
19 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or
20 not incorporated, whether or not organized in the United States and whether or not
21 affiliated) owned or controlled directly or indirectly by the same interests, the
22 secretary or his or her delegate may distribute, apportion or allocate gross income,
23 deductions, credits or allowances between or among such organizations, trades or
24 businesses, if he or she determines that such distribution, apportionment or
25 allocation is necessary in order to prevent evasion of taxes or clearly to reflect the

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1 income of any of such organizations, trades or businesses. The authority granted
2 under this subsection is in addition to, and not a limitation of or dependent on, the
3 provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and
4 (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

5 **SECTION 22.** 71.34 (1) of the statutes is renumbered 71.34 (1k).

6 **SECTION 23.** 71.34 (1am) of the statutes is created to read:

7 71.34 (1am) "Aggregate effective tax rate" means the sum of the effective tax
8 rates imposed by a state, U.S. possession, foreign country, or any combination
9 thereof, on the person or entity.

10 **SECTION 24.** 71.34 (1b) of the statutes is created to read:

11 71.34 (1b) "Effective tax rate" means the maximum tax rate imposed by the
12 state, U.S. possession, or foreign country, multiplied by the apportionment
13 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
14 possession, or foreign country.

15 **SECTION 25.** 71.34 (1e) of the statutes is created to read:

16 71.34 (1e) For purposes of sub. (1k) (j) and (L), "interest expenses" means
17 interest that would otherwise be deductible under section 163 of the Internal
18 Revenue Code and deductible in the computation of Wisconsin adjusted gross
19 income.

20 **SECTION 26.** 71.34 (1k) (j) of the statutes is created to read:

21 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded
22 under the Internal Revenue Code for interest expenses and rental expenses that are
23 directly or indirectly paid, accrued, or incurred to, or in connection directly or
24 indirectly with one or more direct or indirect transactions with, one or more related
25 entities.

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1 **SECTION 27.** 71.34 (1k) (k) of the statutes is created to read:

2 71.34 (1k) (k) A deduction shall be allowed for the amount added to gross
3 income under par. (j), to the extent that the conditions under s. 71.80 (23) are
4 satisfied.

5 **SECTION 28.** 71.34 (1k) (L) of the statutes is created to read:

6 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to
7 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income
8 of a related entity that paid interest expenses or rental expenses to the corporation,
9 to the extent that the related entity could not offset such amount with the deduction
10 allowable under par. (k) or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

11 **SECTION 29.** 71.34 (1L) of the statutes is created to read:

12 71.34 (1L) "Qualified real estate investment trust" has the meaning given in
13 s. 71.22 (9ad).

14 **SECTION 30.** 71.34 (1p) of the statutes is created to read:

15 71.34 (1p) "Related entity" means any person related to a taxpayer as provided
16 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
17 taxpayer's taxable year and any real estate investment trust under section 856 of the
18 Internal Revenue Code, except a qualified real estate investment trust, if more than
19 50 percent of any class of the beneficial interests or shares of the real estate
20 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
21 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
22 year. For purposes of this subsection, the constructive ownership rules of section 318
23 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
24 Revenue Code, shall apply in determining the ownership of stock, assets, or net
25 profits of any person.

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1 **SECTION 31.** 71.34 (1r) of the statutes is created to read:

2 71.34 (1r) For purposes of sub. (1k) (j) and (L), "rental expenses" means the
3 gross amounts that would otherwise be deductible in the computation of Wisconsin
4 adjusted gross income for the use of, or the right to use, real property and tangible
5 personal property in connection with real property, including services furnished or
6 rendered in connection with such property, regardless of how reported for financial
7 accounting purposes and regardless of how computed.

8 **SECTION 32.** 71.42 (1) of the statutes is renumbered 71.42 (1g).

9 **SECTION 33.** 71.42 (1b) of the statutes is created to read:

10 71.42 (1b) "Aggregate effective tax rate" means the sum of the effective tax
11 rates imposed by a state, U.S. possession, foreign country, or any combination
12 thereof, on the person or entity.

13 **SECTION 34.** 71.42 (1s) of the statutes is created to read:

14 71.42 (1s) "Effective tax rate" means the maximum tax rate imposed by the
15 state, U.S. possession, or foreign country, multiplied by the apportionment
16 percentage, if any, applicable to the person or entity under the laws of that state, U.S.
17 possession, or foreign country.

18 **SECTION 35.** 71.42 (1t) of the statutes is created to read:

19 71.42 (1t) For purposes of s. 71.45 (2) (a) 16. and 18., "interest expenses" means
20 interest that would otherwise be deductible under section 163 of the Internal
21 Revenue Code, as adjusted under s. 71.45 (2).

22 **SECTION 36.** 71.42 (4d) of the statutes is created to read:

23 71.42 (4d) "Qualified real estate investment trust" has the meaning given in
24 s. 71.22 (9ad).

25 **SECTION 37.** 71.42 (4m) of the statutes is created to read:

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1 71.42 (4m) "Related entity" means any person related to a taxpayer as provided
2 under section 267 or 1563 of the Internal Revenue Code during all or a portion of the
3 taxpayer's taxable year and any real estate investment trust under section 856 of the
4 Internal Revenue Code, except a qualified real estate investment trust, if more than
5 50 percent of any class of the beneficial interests or shares of the real estate
6 investment trust are owned directly, indirectly, or constructively by the taxpayer, or
7 any person related to the taxpayer, during all or a portion of the taxpayer's taxable
8 year. For purposes of this subsection, the constructive ownership rules of section 318
9 (a) of the Internal Revenue Code, as modified by section 856 (d) (5) of the Internal
10 Revenue Code, shall apply in determining the ownership of stock, assets, or net
11 profits of any person.

12 **SECTION 38.** 71.42 (4n) of the statutes is created to read:

13 71.42 (4n) For purposes of s. 71.45 (2) (a) 16. and 18., "rental expenses" means
14 the gross amounts that would otherwise be deductible under the Internal Revenue
15 Code, as adjusted under s. 71.45 (2), for the use of, or the right to use, real property
16 and tangible personal property in connection with real property, including services
17 furnished or rendered in connection with such property, regardless of how reported
18 for financial accounting purposes and regardless of how computed.

19 **SECTION 39.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Acts
20 20 and 96, is amended to read:

21 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
22 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
23 (5j), and (5k) and not passed through by a partnership, limited liability company, or
24 tax-option corporation that has added that amount to the partnership's, limited

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1 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
2 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

3 **SECTION 40.** 71.45 (2) (a) 16. of the statutes is created to read:

4 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
5 excluded under the Internal Revenue Code for interest expenses and rental expenses
6 that are directly or indirectly paid, accrued, or incurred to, or in connection directly
7 or indirectly with one or more direct or indirect transactions with, one or more
8 related entities.

9 **SECTION 41.** 71.45 (2) (a) 17. of the statutes is created to read:

10 71.45 (2) (a) 17. By subtracting from federal taxable income the amount added
11 to federal taxable income under subd. 16., to the extent that the conditions under s.
12 71.80 (23) are satisfied.

13 **SECTION 42.** 71.45 (2) (a) 18. of the statutes is created to read:

14 71.45 (2) (a) 18. A deduction shall be allowed for the amount added, pursuant
15 to subd. 16. or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.34 (1k) (j), to the federal income
16 of a related entity that paid interest expenses or rental expenses to the insurer, to
17 the extent that the related entity could not offset such amount with the deduction
18 allowable under subd. 17. or s. 71.05 (6) (b) 45., 71.26 (2) (a) 8., or 71.34 (1k) (k).

19 **SECTION 43.** 71.80 (1) (b) of the statutes is amended to read:

20 71.80 (1) (b) In any case of 2 or more organizations, trades or businesses
21 (whether or not incorporated, whether or not organized in the United States and
22 whether or not affiliated) owned or controlled directly or indirectly by the same
23 interests, the secretary or the secretary's delegate may distribute, apportion or
24 allocate gross income, deductions, credits or allowances between or among such
25 organizations, trades or businesses, if the secretary determines that such

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1 distribution, apportionment or allocation is necessary in order to prevent evasion of
2 taxes or clearly to reflect the income of any of such organizations, trades or
3 businesses. The authority granted under this subsection is in addition to, and not
4 a limitation of or dependent on, the provisions of sub. (23) and ss. 71.05 (6) (a) 24. and
5 (b) 45., 71.26 (2) (a) 7. and 8., 71.34 (1k) (j) and (k), and 71.45 (2) (a) 16. and 17.

6 **SECTION 44.** 71.80 (23) of the statutes is created to read:

7 71.80 (23) RELATED ENTITY ADDBACKS. (a) The deductions provided under ss.
8 71.05 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed
9 for any interest expenses or rental expenses described in ss. 71.05 (6) (a) 24., 71.26
10 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following applies to the interest
11 expenses or rental expenses:

12 1. The related entity to which the taxpayer paid, accrued, or incurred the
13 interest expenses or rental expenses during the taxable year directly or indirectly
14 paid, accrued, or incurred such amounts in the same taxable year to a person who
15 is not a related entity or the related entity to which the taxpayer paid, accrued, or
16 incurred such expenses is a holding company or a direct or indirect subsidiary of a
17 holding company, as defined in 12 USC 1841 (a) or (l) or 12 USC 1467a (a) (1) (D), not
18 including any entity that is organized under the laws of another jurisdiction and that
19 primarily holds and manages investments of a bank, subsidiary, or affiliate. For
20 purposes of this subdivision, "interest" does not include interest that is paid in
21 connection with any debt that is incurred to acquire the taxpayer's assets or stock
22 under section 368 of the Internal Revenue Code. If a portion of such an interest
23 expense or rental expense is paid, accrued, or incurred in the same taxable year to
24 a person who is not a related entity, that portion shall be allowed as a deduction to
25 the taxpayer.

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1 2. The related entity was subject to tax on, or measured by, its net income or
2 receipts in this state or any state, U.S. possession, or foreign country; the related
3 entity's tax base in such state, U.S. possession, or foreign country included the
4 income received from the taxpayer for the interest expenses or rental expenses; the
5 related entity's aggregate effective tax rate applied to such income or receipts was
6 at least 80 percent of the taxpayer's aggregate effective tax rate; and the related
7 entity is not a real estate investment trust under section 856 of the Internal Revenue
8 Code, other than a qualified real estate investment trust. For purposes of this
9 subdivision, "any state, U.S. possession, or foreign country" does not include any
10 state, U.S. possession, or foreign country under the laws of which the taxpayer files
11 with the related entity, or the related entity files with another entity, a combined
12 income tax report or return, a consolidated income tax report or return, or any other
13 report or return that is due because of the imposition of a tax that is measured on or
14 by income or receipts, if the report or return results in eliminating the tax effects of
15 transactions, directly or indirectly, between either the taxpayer and the related
16 entity or between the related entity and another entity.

17 3. The taxpayer establishes that the transaction satisfies any other conditions
18 that the department considers relevant, based on the facts and circumstances, to
19 determine that the primary motivation for the transaction was one or more business
20 purposes other than the avoidance or reduction of state income or franchise taxes;
21 that the transaction changed the economic position of the taxpayer in a meaningful
22 way apart from tax effects; and that the interest expenses or rental expenses were
23 paid, accrued, or incurred using terms that reflect an arm's-length relationship.

24 (b) Notwithstanding par. (a), the deductions provided under ss. 71.05 (6) (b) 45.,
25 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for any interest

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1 expenses or rental expenses that are directly or indirectly paid, accrued, or incurred
2 to, or in connection directly or indirectly with one or more direct or indirect
3 transactions with, one or more related entities, if the aggregate amount paid,
4 accrued, or incurred for those related entity transactions is not disclosed on a
5 separate form prescribed by the department in the manner prescribed by the
6 department.

SECTION 9141. Nonstatutory provisions; Revenue.

7
8 (1) RELATED ENTITY ADDBACK. The department of revenue has entered into a
9 substantial number of settlement agreements with banks and other financial
10 institutions regarding their investment subsidiaries. The intent of the legislature
11 in enacting 2007 Wisconsin Act (this act) is to have no effect on those settlement
12 agreements.

SECTION 9341. Initial applicability; Revenue.

13
14 (1) RELATED ENTITY ADDBACK. The renumbering of sections 71.34 (1) and 71.42
15 (1) of the statutes, the renumbering and amendment of section 71.26 (2) (a) of the
16 statutes, the amendment of sections 71.05 (6) (a) 15., 71.30 (2), 71.45 (2) (a) 10., and
17 71.80 (1) (b) of the statutes, and the creation of sections 71.01 (1am), (1t), (5s), (9ad),
18 (9am), and (9an), 71.05 (6) (a) 24. and (b) 45. and 46., 71.22 (1b), (1tm), (3m), (9ad),
19 (9am), and (9an), 71.26 (2) (a) 7., 8., and 9., 71.34 (1am), (1b), (1e), (1k) (j), (k), and
20 (L), (1L), (1p), and (1r), 71.42 (1b), (1s), (1t), (4d), (4m), and (4n), 71.45 (2) (a) 16., 17.,
21 and 18., and 71.80 (23) of the statutes first apply to taxable years beginning on
22 January 1, 2008.

23 (END)